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Copyright Royalty Board

37 CFR Part 381

[Docket No. 21-CRB-0002-PBR (2023-2027)]

Determination of Rates and Terms for Public Broadcasting (PB IV)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule.

SUMMARY: The Copyright Royalty Judges publish for comment proposed regulations that set rates and terms for the use of certain copyrighted works by public broadcasting entities for the period beginning January 1, 2023, and ending December 31, 2027.

DATES: Comments and objections, if any, are due no later than [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may send comments, identified by docket number 21-CRB-0002-PBR (2023-2027), online through eCRB at <https://app.crb.gov>.

Instructions: To send your comment through eCRB, if you don't have a user account, you will first need to register for an account and wait for your registration to be approved. Approval of user accounts is only available during business hours. Once you have an approved account, you can only sign in and file your comment after setting up multi-factor authentication, which can be done at any time of day. All comments must include the Copyright Royalty Board name and the docket number for this proposed rule. All properly filed comments will appear without change in eCRB at <https://app.crb.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to eCRB at <https://app.crb.gov> and perform a case search for docket 21-CRB-0002-PBR (2023-2027).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist,
at 202-707-7658 or crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 118 of the Copyright Act, title 17 of the United States Code, establishes a statutory license for the use of certain copyrighted works in connection with noncommercial television and radio broadcasting. Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (“Judges”) to conduct proceedings every five years to determine the rates and terms for the section 118 license. 17 U.S.C. 801(b)(1), 804(b)(6). Accordingly, the Judges commenced a proceeding in January 2021, by publishing notice of the commencement of the proceeding and a request that interested parties submit petitions to participate. 86 FR 325 (Jan. 5, 2021).

The Judges received petitions to participate in the current proceeding from The American Society of Authors, Composers and Publishers (ASCAP); Broadcast Music, Inc. (BMI); Church Music Publishers’ Association, Inc. (CMPA); Educational Media Foundation (EMF); Global Music Rights, LLC; National Religious Broadcasters Noncommercial Music License Committee (NRBNMLC); David Powell; Public Broadcasting Entities (Corporation for Public Broadcasting (CPB), National Public Radio (NPR), and Public Broadcasting Service (PBS)); SESAC Performing Rights, LLC (SESAC); and The Harry Fox Agency LLC (HFA).

The Judges gave notice to all participants of the three-month negotiation period required by 17 U.S.C. 803(b)(3) and directed that, if the participants were unable to negotiate a settlement, they should submit Written Direct Statements no later than September 10, 2021. Notice of Participants, Commencement of Voluntary Negotiation Period, and Case Scheduling Order (Feb. 9, 2021).

There are two ways copyright owners and public broadcasting entities¹ may negotiate rates and terms under the section 118 statutory license. First, copyright owners may negotiate rates and terms with specific public broadcasting entities for the use of all of the copyright owners' works covered by the license. Section 118(b)(2) provides that such license agreements "shall be given effect in lieu of any determination by the . . . Copyright Royalty Judges," provided that copies of the agreement are submitted to the Judges "within 30 days of execution." 17 U.S.C. 118(b)(2).

Second, copyright owners and public broadcasting entities may negotiate rates and terms for categories of copyrighted works and uses that would be binding on all owners and entities using the same license and submit them to the Judges for approval. Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt rates and terms negotiated by "some or all of the participants in a proceeding at any time during the proceeding" provided they are submitted to the Judges for approval.

This section provides that the Judges shall provide notice and an opportunity to comment on the agreement to (1) those that would be bound by the terms, rates, or other determination set by the agreement and (2) participants in the proceeding that would be bound by the terms, rates, or other determination set by the agreement. *See* section 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any *participant* objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.*

On June 21, 2021, the Judges received a joint proposal from participants HFA and NRBNMLC regarding fees for recording rights under 37 CFR 381.7(b)(4) for the period 2023-2027. Joint Proposal . . . Regarding Fees for Recording Rights Under 37 CFR

¹ A "public broadcasting entity" is defined as a "noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (c)" of section 118. 17 U.S.C. 118(f).

381.7(B)(4) (June 21, 2021) (Proposal). The fees in § 381.7(b)(4) apply to the “recording of nondramatic performances and displays of musical works for the types of uses described in 17 U.S.C. 118(c)(2)-(3) by noncommercial radio stations other than uses in a radio program produced by [NPR] and other than uses subject to voluntary license agreements.” Proposal at 2. HFA and NRBNMLC filed a proposal instead of a notice of settlement because NRBNMLC does not represent all radio stations subject to the fees. *Id.* Participant EMF joins in the proposal. *Id.* at 3 n.2.

The Proposal states that the fees in § 381.7(b)(4) should be modified. *See id.* at 2-3. It also proposes carrying forward unchanged (except to replace “January 1, 2018” with “January 1, 2023” and “December 31, 2022” with “December 31, 2027”) current provisions set forth in §§ 381.1, 381.2, 381.9, and 381.11. *Id.*

The Judges solicit comments on whether they should adopt the proposed regulations as statutory rates and terms relating to the reproduction, distribution, performance or display of certain works by public broadcasting entities (as defined in 17 U.S.C. 118(f)) in the course of the activities described in 17 U.S.C. 118(c).

Comments and objections regarding the proposed changes must be submitted no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

List of Subjects in 37 CFR Part 381

Copyright, Music, Radio, Television, Rates.

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 381 as follows:

PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 381 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1), 803.

2. Revise § 381.1 to read as follows:

§ 381.1 General.

This part establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 2023, and ending on December 31, 2027. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(c).

3. Revise § 381.7(b)(4) to read as follows:

§ 381.7 Recording rights, rates and terms.

* * * * *

(b) * * *

(4) For such uses other than in an NPR-produced radio program:

2023-2027

(i) Feature \$.83

(ii) Feature (concert) (per half hour)\$ 1.72

(iii) Background \$.42

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Dated June 24, 2021.

Jesse M. Feder,
Chief Copyright Royalty Judge.
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